Immigration Policy

I. Introduction

Saint Joseph’s University (hereafter the “University”) is an equal opportunity employer. The University seeks to strengthen its academic standing by hiring scholars and administrative professionals who are highly qualified for their jobs and who have the potential to make significant contributions to the institution. The University’s workforce includes some faculty and administrators who are not U.S. citizens, U.S. Nationals, Lawful Permanent Residents, Asylees, Refugees or Temporary Residents under the 1986 amnesty program. In general, if a person does not fall into one of these categories and/or does not hold some other form of employment authorization, then he or she may need to apply for some form of authorization from U.S. immigration authorities before he/she can be employed by the University. This is intended to state the University’s policy for providing immigration support to its current and prospective faculty and administrators who are Foreign Nationals.

II. Definitions

Foreign National: any prospective faculty or administrators member who is not a United States Citizen, United States National, Lawful Permanent Resident (“green card” holder), Asylee, Refugee or Temporary Resident under the 1986 amnesty program at the time of their appointment.

Nonimmigrant Visa Status: a temporary immigration status providing permission for a Foreign National to work for the University in a specific position. Includes H-1B status, TN status, and O-1 status, among others.

Immigrant Status, Permanent Residence or “green card”: the right to live and work in the United States for any employer for no set time limit. Persons may be sponsored to become permanent residents through a close family member, an employer, or in rare cases, by themselves.

Labor Certification: an administrative process required for many employment-based permanent residence categories. For faculty, “Labor Certification” must be sought within 18 months of the faculty member’s appointment decision being made. Some faculty may be exempt from the “Labor Certification” process due to their exceptional scholarly record. For non-teaching positions, the labor certification requires extensive evidence of unsuccessful recruitment for qualified U.S. workers.

Labor Condition: an application filed as part of the H-1B process. Also referred to as the LCA.

Fundamental Research: basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as
distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons (National Security Decision Directive 189)

III. Confirmation of Employment Authorization

As required by federal law, all faculty, administrators and staff hired after November 6, 1986, without limitation or discrimination, whether U.S. or foreign-born, must complete and sign United States Citizenship and Immigration Service Form I-9, the Employment Eligibility Verification. Every new employee must complete Section 1 of Form I-9 on or before the first day of employment, but no later than three days after commencement of employment, and present acceptable original or documents as required by Form I-9 to establish identity and eligibility to work in the U.S. Form I-9 may be completed prior to the first day of employment only if the employee has received a written offer of employment. The Director of Employee and Labor Relations or designee shall review and copy the document(s) presented by the employee, record the required information in Section 2 and sign the Form I-9 no later than three days of the commencement of employment. The copy of the supporting documentation completed in Section 2 must be attached to the Form I-9.

IV. Employment of Foreign National Workers

Like all workers, Foreign National workers will not be permitted to work for the University until authorized to do so by federal law. The determination of whether or not a Foreign National is authorized to begin employment (or will need immigration sponsorship) will be made by the University, through its Office of Human Resources, in consultation with the Office of the General Counsel. In order to be employed by the University, a Foreign National worker must hold an unexpired Nonimmigrant Visa or an unexpired Employment Authorization Document, or be afforded employment authorization by virtue of some other provision of law such as “cap-gap” authorization for F-1 students with pending H-1B petitions or “H-1B portability” employment authorization afforded to those H-1B workers with a pending change of employer petition.

V. University Support for Immigration Filings

A Foreign National worker who receives an offer of employment from the University may need to be sponsored for a Nonimmigrant Visa. In such cases, the University will support the petition of the prospective employee to secure the immigration status which he/she needs to be legally employed by the University.

The University will itself or through designated and approved outside counsel prepare and file a Nonimmigrant Visa Petition to obtain appropriate work authorization. It is the responsibility of the foreign worker to cooperate with this process by providing all requested documents within a reasonable time.

As part of this process, the University will request the foreign worker to produce documents to confirm his/her current immigration status and eligibility for the requested visa classification.
This will include, but not be limited to, passports, visas, Arrival-Departure Records (Forms 1-94), Forms I-20, notices of approval for other petitions or applications, Employment Authorization Document(s), degrees/diplomas, transcripts and other documents relevant to the person’s immigration status.

In the event that the foreign worker is not in valid status at the time of filing, or has concealed or misrepresented any aspect of his immigration or work history, or is inadmissible or removable under federal immigration law, then the University reserves the right to withhold sponsorship or support for the foreign worker and/or to request the withdrawal of any pending Petition or the revocation of any approved Petition.

VI. Information about H-1B Visa

H-1B visas are one of the most common Nonimmigrant Visa classifications for university scholars and professionals. Foreign workers who are classified as professionals i.e. persons working in positions which require at least a bachelor’s degree or higher in a specialized field, can be eligible for H-1B status.[1] H-1B status is a temporary, non-immigrant classification which is employer-sponsored and employer-specific. This means that it is a Petition signed and submitted by a U.S. employer on behalf of a foreign worker. A person in H-1B status is authorized to work only for the petitioning employer. In general, foreign workers can be granted up to six years (2 cycles of 3 years) of H-1B status, although this period can sometimes be extended under certain circumstances.

If, at any time, a foreign worker covered by an H1B visa travels outside of the United States, they must show their updated I-94 card to the Director of Employee and Labor Relations or designee immediately upon their return.

If an H-1B worker is terminated before the end of his or her period of authorized admission in H-1B status, the petitioning employer will be liable for the costs of return transportation of the alien to his or her last place of foreign residence. These costs include reasonable costs for a return plane ticket. Other costs, including for example, fees for shipping furniture and household goods are not included.

VII. Extensions and Renewals of Nonimmigrant Visa Status

Some members of the University’s faculty and/or administrators in Nonimmigrant Visa status may require extensions of their immigration status. In order to ensure the timely filing of an extension, it is the responsibility of current faculty and/or administrators to inform the Office of Human Resources of the expiration of any University-sponsored immigration status not less than six months prior to the expiration date. Thereafter, it is the responsibility of the faculty or administrators to provide any and all documents which may be required to prepare and file a timely extension of the person’s Nonimmigrant Visa status.
VIII. **I-129 Petition for Non-Immigrant Worker Export Control Certification**

“Exports” are not only tangible shipments of goods from the United States to another country. The government treats the release of controlled technology and technical data to a foreign worker in the United States as an export to that worker’s country of nationality. The “release” or transfer of technology or technical data to foreign nationals in the United States is “deemed” an export to their country of nationality. This is known as the “deemed export rule.”

Export controls regulate the distribution to foreign nationals, foreign entities and foreign countries of strategically important technology, services and information for reasons of foreign policy and national security. Export control laws apply to all activities, not just sponsored research projects. In the absence of an exclusion, a license must be obtained from the U.S. Department of State or Commerce to disclose controlled technical information to a foreign person in the U.S. or abroad.

The U.S. Citizenship and Immigration Services (USCIS) Form I-129 (Rev. 11/23/10) – Petition for a Nonimmigrant Worker – requires U.S. employers to certify their compliance with U.S. export licensing regulations when petitioning for H-1B, H-1B1, L-1 and O-1 visa classifications on behalf of employees.

IX. **Fundamental Research Exclusion**

Broad exemptions from the export regulations exist. No license is required for fundamental research which is defined as “basic and applied research in science and engineering, the results of which are published or shared broadly within the scientific community.”

The University research will not be deemed to qualify as fundamental research if:

1) the University accepts any restrictions on the publication of the information resulting from the research, other than limited prepublication reviews by research sponsors to prevent inadvertent divulging of proprietary information provided to the researcher by the sponsor or to insure that the publication will not compromise patent rights of the sponsor; or

2) the research is federally funded and specific access and dissemination controls regarding the resulting information have been accepted by the university or the researcher.

Furthermore, no license is required to export or transfer information and research results that are in the public domain, e.g. generally available to the interested public through, among other channels, libraries, bookstores, or newsstands, websites accessible to the public, or trade shows, meetings, and seminars in the United States that are open to the public.

In addition, no license is required to share technical information with a foreign person who:

- Is a full-time, bona fide University employee;
- Has a permanent US address while employed, provided that he/she is:
(a) not a national of certain countries and

(b) is advised in writing not to share controlled information with other foreign persons.

X. University-sponsored Applications for Legal Permanent Residence

Some foreign workers may seek the University’s support for employer-sponsored permanent residence, also referred to as a “green card.” The University may, but is under no obligation to, sponsor foreign workers for legal permanent residence in the U.S. Decisions to provide University support for an employer-sponsored permanent residence shall be made on a case-by-case basis.

XI. Recommendations to sponsor a foreign worker for Legal Permanent Residence

A request to sponsor a foreign worker for legal permanent residence shall be made in writing by the foreign worker’s department chair or supervisor. Such requests shall be treated as recommendations only and are not binding on the University. In making such requests, department chairs and supervisors shall consider i) the program or activity the worker is involved in, length of service and the estimated period of continued service; ii) how the worker is needed as an integral part or as an essential component of the department or activity; iii) what current and future benefit the worker brings to the University, iv) present and future funding source for the worker’s position and v) efforts, if any, that have been made to recruit other qualified workers.

The decision to sponsor a foreign worker for legal permanent residence will be made by the Provost (for applicants/employees in all areas reporting to the Provost) or the appropriate Vice President (for applicants/employees in all areas reporting to the Vice President), in consultation with the Director of Employee and Labor Relations, the dean of the school in which the applicant/employee is working, the University’s General Counsel and the department chair or supervisor. In the case of a faculty member, he/she must have completed at least six months of employment and his/her department chair and dean must indicate satisfaction with such performance. In the case of an administrative or professional employee, he/she must have completed one year of employment and received an overall rating on his/her annual performance evaluation of, at a minimum, “meets expectations.”

XII. Referral to Outside Immigration Counsel

If the University decides to sponsor a foreign worker for legal permanent residence, then the matter will be referred to designated and approved outside counsel specializing in U.S. immigration law. Because a Petition for employer-sponsored permanent residence is signed by and filed in the name of the University, and in order to be assured of the professional competence and integrity of any attorney representing the University, the University has the right to require the foreign worker to use a lawyer or law firm of its choice.

If the University agrees to sponsor a foreign worker for legal permanent residence, then the Office of Human Resources, the home department and other university offices will cooperate by
providing the information and documents which are customarily used and required to support employer-sponsored applications for permanent residence.

With the exceptions noted below, the prospective employee is responsible for paying the attorney’s fees, the costs and the filing fees associated with such an application. It is the responsibility of the foreign worker to make timely payment of all attorney’s fees, costs and filing fees associated with a University-sponsored application for legal permanent residence. Any costs associated with the filing of immigration-related applications for family members, i.e. spouse and minor children accompanying the foreign worker, shall be borne by the foreign worker.

Some applications for legal permanent residence require the filing of an Application for Permanent Labor Certification with the U.S. Department of Labor (“Labor Certification”). As required by federal regulation, all attorney’s fees and other costs[2] directly associated with the filing of a Labor Certification shall be paid by the University directly to outside immigration counsel or other provider and the foreign worker shall not be required to pay any part of such fees or costs, either directly or through reimbursement. In consultation with counsel, the University will determine whether a Labor Certification or an alternative means is the best method for seeking permanent residence on behalf of the University employee.

XIII. Attorney’s Fees and Costs Relating to Immigration-related Filings

The Department of Labor considers the costs related to filing an H-1B petition to be a business expense of the employer. In filing an H-1B petition, the employer must attest that it is paying the Required Wage Rate so that the wage offered to the Foreign National cannot fall below Prevailing or Actual wage guidelines. As such, the University will pay the reasonable attorney’s fees as well as filing fees per employee in support of an H-1B visa petition.

If the employee is not eligible for an H-1B visa yet qualifies for another temporary (nonimmigrant) visa category, the University will pay attorney’s fees and filing fees for the other nonimmigrant visa application (including, for example, TN, O-1, etc.) in an amount not to exceed the current attorney’s fees and filing fees required for an H-1B petition. Any fees in excess of that amount must be paid by the employee.

As required by federal regulation, the attorney’s fees and costs directly associated with the filing of a Labor Certification Application (PERM) as part of the permanent residency process shall also be paid by the University and the foreign worker shall not be required to pay any part of such fees or costs, either directly or through reimbursement. In addition, the University will pay the filing fees (but not the legal fees) associated with other permanent residency (immigrant) filings, including the filing fees associated with the I-140 immigrant petitions and the I-485 adjustment of status applications.

If a foreign worker pursues Permanent Residency through a method other than PERM (e.g. Outstanding Researcher or Extraordinary Ability Immigrant Petition), the University will pay the attorney’s fees in an amount not to exceed to current attorney’s fees required for a PERM application. Any fees in excess of that amount must be paid by the employee.
Except as otherwise provided herein, the employee is required to pay the legal fees associated with other permanent residency filings, including for example, I-140 immigrant petitions and I-485 adjustment of status applications.

Except as otherwise stated herein, Saint Joseph’s University does not pay attorney’s fees associated with the preparation and filing of Petitions for Nonimmigrant and Immigrant Visa status. It is the responsibility of the foreign worker to make timely payment of all attorney’s fees and costs, not covered, in association with a University-sponsored Nonimmigrant Visa Petition. This applies to new filings, transfers and extensions of visa status. Any costs associated with the filing of immigration-related applications for family members, i.e. spouse and minor children accompanying the foreign worker, shall be borne by the foreign worker.

The University will pay for such fees and costs if otherwise required by law. The University will also pay the standard filing fees for nonimmigrant petitions.[3]

XIV. **Authorized Signatures**

Only the Provost and/or the appropriate Vice President are authorized to sign immigrant or nonimmigrant petitions on behalf of the University, in order to ensure the University’s compliance with the law. No other faculty member, department chair or supervisor should sign any immigration-related documentation prepared or presented by any employee.

XV. **Immigration Sponsorship Does Not Supersede University’s Employment Policy or Practices**

This is to confirm that the University’s agreement or willingness to sponsor any foreign worker for a temporary visa classification or for legal permanent residence is not a contract of employment and does not supersede any of the University’s agreements, policies or handbooks relating to employment. Moreover, any statements made by the University or any of its faculty or administrators in support of any immigration-related application or petition shall not supersede or be included in or be a part of any employment-related evaluation, including evaluations for tenure, promotions, pay increases or new appointments.

XVI. **University’s Policy May Be Changed at any Time without Prior Notice**

This immigration policy shall be in effect until it is changed, modified, revised, amended or terminated. This immigration policy may be changed, modified, revised, amended or terminated at any time, for any reason, with or without prior notice.

XVII. **Questions about the Immigration Policy**

Any questions about the University’s Immigration Policy may be directed to the Director of Employee and Labor Relations in the Office of Human Resources.
Any exceptions to this Policy, including, but not limited to payments pursuant to it, must be approved in advance of applying the exception by either the Provost or the appropriate Vice President, in consultation with the Vice President for Human Resources.

XVIII. Effective Date for the Immigration Policy

The Immigration Policy shall be effective as of February 1, 2016.

[1] Citizens of Canada and Mexico may be eligible for employment as faculty and/or staff within an immigration classification referred to as “TN.” Citizens of Australia as well as citizens of Chile and Singapore may be eligible to work pursuant to separate provisions of U.S. immigration law. Other options include O-1 status for extraordinary ability aliens. Any SJU-sponsored application or petition for TN status or for any other temporary immigration status is governed by this policy.

[2] Such costs also include advertising fees (on-line or print) or other costs related to testing the U.S. labor market as part of the Labor Certification process.

[3] Standard filing fees include the filing fee for nonimmigrant petitions such as the filing fee for the I-129 petition (currently $325) as well as the additional fraud fee (currently $500) for H-1B petitions. Filing fees are subject to change and the University will pay the appropriate current fee. Standard filings fees do not include any additional premium processing fees for expedited adjudication (currently $1,225).